

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:18 CR 37**

This matter is before the Court on defense counsel's Motion to Waive Defendant's Presence at Competency Hearing (Doc. 46).

Defendant was not required to be present during the previous hearing on defense counsel's Motion for Psychological Evaluation (Doc. 39).

However, the proceeding scheduled for May 22, 2019, is a competency hearing, and observations of a defendant's demeanor and behavior are among the factors a court may consider when assessing competency. See United States v. Myles, No. 5:15-CR-172-F-10, 2016 WL 4491408, at \*8 (E.D.N.C. Aug. 24, 2016). Defendant's presence is particularly important here, as he was previously found to be competent in mid-April 2019 during a hearing that he also attended.

**IT IS THEREFORE ORDERED THAT** the Motion to Waive Defendant's Presence at Competency Hearing (Doc. 46) is **DENIED**.

Signed: May 21, 2019

J. Charles Mitchell

W. Carleton Metcalf  
United States Magistrate Judge

